

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7257 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PATHUBHAI VASHRAMBHAI RAJPUT

Versus

GOVERNMENT OF GUJARAT
THROUGH THE SECRETARY (APPEALS) AND OTHERS

Appearance:

MR YN RAVANI for Petitioner

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 15/12/1999

ORAL JUDGEMENT

Land admeasuring 15 acres, forming part of Survey
No.371, situated at village Merupar, Taluka Halvad, was
ordered to be auctioned by the Collector, District
Surendranagar, respondent No.2 herein. The petitioner

had participated at the said auction and he had offered Rs.10,400/- per acre. The said offer was the highest. In spite of the said fact, sale in favour of the petitioner was not confirmed and by an order dated 10th October, 1997, respondent No.2 had ordered that the proceedings of the said auction should be cancelled. Being aggrieved by the said order passed by respondent No.2, the petitioner had approached respondent No.1 by filing a revision application. The said revision application has been rejected by an order dated 5th February, 1999. Being aggrieved by the order dated 5th February, 1999 and order dated 10th October, 1997, passed by respondent No.2, the petitioner has approached this Court, with a prayer that the said orders be quashed and set aside and the respondent authorities be directed to confirm the sale in favour of the petitioner and hand over possession of the land in question to the petitioner.

2. It is pertinent to note that even at an earlier occasion, when the sale was not confirmed in favour of the petitioner, the petitioner had challenged the order of the Collector and the revision application, which was filed at an earlier occasion, was also rejected. The petitioner had thereafter approached this Court by filing a writ petition, being Special Civil Application No.5786 of 1996, which was allowed and by virtue of the order passed in the said petition, the Collector, i.e. respondent No.2, was given certain directions and was asked to reconsider the matter in the light of the observation made in the order. After the matter was remanded to the Collector, the Collector had considered the matter again and, thereafter, by an order dated 10th October, 1997, which has been referred to hereinabove, he has decided not to confirm the sale in favour of the petitioner.

3. Learned Advocate Shri Ravani, appearing for the petitioner, has submitted that the Collector ought to have confirmed sale in favour of the petitioner for the reason that the petitioner had offered the highest amount. Upset price determined in respect of the land in question was Rs.10,000/- per acre and the petitioner had offered Rs.10,400/- per acre. According to him, no financial loss would be caused to the Government by virtue of the sale and, therefore, there was no reason for the Collector not to confirm the sale. Moreover, he has submitted that no person had ever objected to the sale. Had someone objected to the auction by filing an application under the provisions of Section 178 of the Bombay Land Revenue Code (hereinafter referred to as "The

Code"), the things would have been different, but, in the instant case, as there was no application or objection filed by any one against the same, it was the duty of the Collector to confirm the sale. Moreover, he has submitted that the reason, for which the sale has not been confirmed, is not just and proper. The collector has observed in the order that by beat of drum the details with regard to the auction were not duly notified at Village Merupar. It has been submitted by him that in these modern days, notification or publication of an auction sale by beat of drum would not have much importance. He has submitted that there was participation by three persons at the auction and except Village Merupar, at all other places, the proposed auction was duly advertised. In the circumstances, he has submitted that the Collector ought not to have given more weightage to non-publication of the details of the auction by beat of drum at Village Merupar.

4. It has also been submitted that the order passed by the Collector is not in consonance with the direction given by this Court in Special Civil Application No.5786 of 1996. It has been submitted by him that this Court had given a direction that as the details with regard to agricultural land held by the petitioner were not ascertained at an earlier occasion, the Collector was asked to examine the said fact. Moreover, the Collector was asked to consider the provisions of Section 178 of the Code and, thereafter, he had to take a decision regarding legality of the sale in question. Instead of that, the Collector had examined some more factors while passing the impugned order and, therefore, the order of the Collector is not just and proper. He has further submitted that the said order is also discriminatory in nature because in similar situation, sale effected in respect of land situated at Village Ghanshyampura and Chupani had been confirmed. As the sale in respect of the land in question in favor of the petitioner has not been confirmed, it has been submitted by the learned Advocate that discriminatory treatment has been given to the petitioner. It has been further submitted by the learned Advocate that so far as sale of land at village Ghanshyampura is concerned, though the Gram Panchayat of Village Ghanshyampura had objected to the sale, the Collector had confirmed the sale in favour of the person, who had offered the highest bid. He has, therefore, submitted that the case of the petitioner is on a better footing because in his case, the Gram Panchayat had not raised any objection.

5. After hearing the learned Advocate and upon

perusal of the impugned orders, I find that there is no substance in the petition.

6. The Collector has not confirmed the sale in favour of the petitioner mainly on two grounds. It has been stated in the order that only three persons had participated at the auction. He has come to a conclusion that the participation was least possible, because there was no due advertisement of the auction sale. It has been stated by him that necessary advertisement or publication was not made by beat of drum at the place where the land in question has been situated. He has expressed his opinion to the effect that had the advertisement been proper or had the advertisement been by beat of drum, more persons would have participated and in that event, impliedly, he has suggested that the Government could have fetched more amount due to real inter se bidding at the time of the auction. Though he has not specifically stated that the amount, which was offered was less, when he comes to a conclusion that only three persons had participated in the auction and when he has observed that there was no sufficient bidding, he has, impliedly, suggested that the price fetched was not adequate or the land in question could have been sold at a higher price. It has also been observed by him that there were only paper proceedings in relation to the auction. This fact clearly denotes that the State had not received adequate consideration for the land, which was auctioned.

7. Thus, the Collector is of the view that the Government could have fetched more price if adequate publication would have been given to the auction sale. He has incidentally observed that instead of selling the land in one lot of 15 acres, it would have been better if the land would have been divided into four parts because in such an event, amount payable for each portion would have been less and in that event, more persons, belonging to backward class, could have come forward to purchase the land, because, very often, in small villages, persons having more means, so as to purchase a big chunk of land, are less. Moreover, it is a policy of the Government to dispose of such lands in favour of poor and downtrodden persons. If the land is to be sold in a very big piece, normally, those who are poor or downtrodden would not come forward to purchase such a land due to their poverty.

8. The order of the Collector is a speaking order. He has elaborately stated the reasons for which he came to the conclusion that the sale in favour of the

petitioner should not be confirmed.

9. Relevant sections in the code with regard to confirmation of sale or otherwise are Sections 178 and 179. Section 178 pertains to a case where somebody objects to the auction proceedings. If an application objecting the proceedings or sale is received within a particular period, the application is to be considered and a final decision is to be taken on the application as per the provisions of Section 178. If there is no application or if the application is rejected, then the Collector has to consider the case as per the provisions of Section 179

reads as under :-

"179. Order confirming or setting aside sale.-On the expiration of thirty days from the date of the sale, if no such application as is mentioned in the last preceding section has been made, or if such application has been made and rejected, the Collector shall make an order confirming the sale;

Provided that if he shall have reason to think that the sale ought to be set aside notwithstanding that no such application has been made, or on grounds other than those alleged in any application which has been made and rejected, he may after recording his reasons in writing, set aside the sale."

Upon perusal of the said Section, it is very clear that if for any reason or on the grounds other than those alleged in the application which might be made for setting aside the sale, the Collector does not want to confirm the sale, he has to record his reasons in writing. In the instant case, the said requirement of the Section has been fulfilled because the Collector has stated the reasons. He has found that only three persons had participated at the auction and he has come to a conclusion that the auction was not duly advertised. It is worth noting that the land in question is situated at Village Merupar and the residents of Merupar were not informed about the auction by beat of drum. Normally, residents of Village Merupar would be the most interested persons so far as the auction is concerned because normally a person would like to purchase agricultural

land in his own village. For the above-referred two reasons, one can surely come to a conclusion that the State could have definitely fetched more price if there had been more participants at the auction, because, in that event, on account of inter se competition amongst the bidders, the State could have fetched higher price of the land in question. The said reason is absolutely cogent and germane to non-confirmation of the auction sale.

10. It is pertinent to note here that the Collector, when he disposes of any Government property, has to take due care to see that the State fetches adequate consideration or proper price for the same. If he comes to a conclusion that the price fetched by the State is not adequate, it becomes his bounden duty to see that the sale is not confirmed. Moreover, no citizen has any legal or fundamental right to purchase Government property at an auction, especially when the sale is not properly effected or when the State has not received proper price or adequate consideration. In the instant case, the Collector has come to a definite conclusion that the auction was not duly advertised and there was less participation of bidders and he has also suggested that the auction proceedings were merely on paper. These facts denote that the auction was not held properly and, therefore, it was not in the interest of the State to dispose of the land in question in favour of the petitioner and for the said reason, which has been duly recorded in his order, he has not confirmed the sale in favour of the petitioner.

11. Section 179 of the Code gives discretionary power to the Collector with regard to confirmation of sale. When such a discretionary power is conferred on an officer by a statute, the power must be exercised with due diligence and the officer exercising the power must act reasonably and in good faith. He should be guided by a proper motive and relevant considerations. His action should also be in harmony with the policy of the State and if the power is so exercised within the limits defined by the statute, the decision taken in exercise of the power will be valid and normally the court would not interfere with the decision so taken, but if the action taken or the decision arrived at by the officer is outside the statutory limit or if it is based on irrelevant considerations or improper motive, the court should quash the same.

12. In the instant case, the Collector has exercised his statutory power with due care. He has duly examined

the proceedings of the auction and for justifiable reasons he has not confirmed the sale. No prudent officer, acting in the interest of the State, would permit the property of the State to be disposed of at a lesser price. He should make an effort to see that policy laid down by the State is followed and maximum possible price is fetched by the State while disposing of its property. In my opinion, the Collector has rightly not confirmed the sale and while doing so, he has acted well within the limits prescribed by Section 179 of the Code and has considered only relevant factors.

13. The learned Advocate has also made an averment with regard to discriminatory treatment given by the Collector. It has been submitted by him that sale of land situated at Ghanshyampura and Chupani were confirmed, whereas sale in favour of the petitioner was not confirmed. Facts of both the places can be different. Here, in the instant case, the Collector has recorded the reasons, for which he has not confirmed the sale. I do not see any reason to disturb the impugned order of the Collector merely on the ground that at some other place, sale was confirmed in favour of some other persons, especially when this Court is not having complete details of the auction sales, with which the petitioner wants to compare the present case.

14. The submission that the Collector has not considered the directions given by this Court in Special Civil Application No.5786 of 1996 is also not well-founded. This Court had directed the Collector to reconsider the matter, especially in the light of the provisions of Section 178. As stated hereinabove, Sections 178 and 179 are relevant sections. It is not in dispute that nobody had objected to the sale and, therefore, there was no question with regard to considering the matter in the light of the provisions of Section 178 of the Code. At the time of confirmation, the Collector had to consider the provisions with regard to Section 179 of the Act. As stated hereinabove, the Collector is under a statutory obligation to consider the provisions of Section 179. He has duly considered the same while passing the impugned order and, therefore, it cannot be said that the Collector has not followed the directions, which were given by this Court. Even in absence of any specific direction given by this Court, it was obligatory on the part of the Collector to consider the provisions of Section 179, which he has duly considered and has come to a conclusion that confirmation of sale was not in the interest of the State and, therefore, I do not see any substance in the said

argument advanced by the learned Advocate.

15. The order of the Collector has been duly upheld with a reasoned order by the revisional authority.

16. It has been lastly submitted by the learned Advocate that the petitioner be permitted to make a representation to the respondents to reconsider the petitioner's case. The petitioner is not prevented in any manner from making such a representation. If he makes a representation, it would be open to the respondent-authorities to take an appropriate decision on the representation which might be made, but the decision which might be rendered on the representation shall not give a fresh cause of action to the petitioner so as to challenge the decision taken on the representation before any forum.

17. Looking to the facts and reasons stated hereinabove, I do not see any substance in the petition and, therefore, the petition is rejected.

15th December, 1999 (A.R. Dave, J.)

(apj)